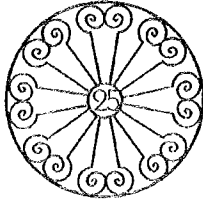


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March 27, 2012

Via Electronic Filing

Jocelyn Boyd
South Carolina Public Service Commission
P.O. Drawer 11649
Columbia, SC 29211

Re: Kiawah Property Owners Group, Inc
PSC Docket No. 2011-317-W/S
YCR File: 2589-20110772

Dear Jocelyn:

Enclosed please find Kiawah Island Property Owner's Group Inc ("KPOG's") Response to Kiawah Island Utility's Answer to KPOG's Petition for Rehearing in the above referenced matter.

I am providing a Certificate of Service, indicating all parties of record have been provided this Response.

With kind regards, I am

Sincerely,

Young Clement Rivers, LLP

Michael A. Molony

MAM/tro
Enclosure(s)

cc: David Butler
Shannon Bowyer Hudson
Jeffrey M. Nelson,
G. Trenholm Walker,
John P. Seibels, Jr
Jason S. Luck
Diane Lehder
Wendy Kulick

BEFORE THE
PUBLIC SERVICE COMMISSION OF SOUTH CAROLINA
Docket No. 2011-317-W/S

CERTIFICATE OF MAILING

We hereby certify that on this 27th day of March 2012, we served a copy of Intervenor
Kiawah Property Owners Group, Inc., Response to Kiawah Island Utilities Answer to Kiawah
Property Owners Group, Inc to Petition For Rehearing or Reconsideration to the Chief Clerk and
Administrator of the Public Service Commission upon:

G. Trenholm Walker, Esquire
Pratt-Thomas, Pearce, Epting, & Walker
P.O. Drawer 22247
Charleston, South Carolina 29413-2227

Jocelyn Boyd
Chief Clerk & Administrator
South Carolina Public Service Commission
P. O. Box 11649
Columbia, SC 29211

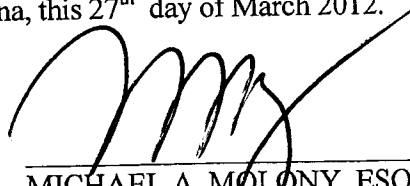
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Kiawah Island Community Association, Incorporated
The Seibels Law Firm
127 King Street, Suite 100
Charleston, SC 29401

by electronic filing.

DATED at Charleston, South Carolina, this 27th day of March 2012.



MICHAEL A. MOLONY, ESQUIRE
Young Clement Rivers, LLP
25 Calhoun Street, P.O. Box 993
Charleston, South Carolina 29401

Charleston, South Carolina

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 2011-317-W/S
March 27, 2012

**IN RE: APPLICATION OF KIAWAH ISLAND
UTILITY, INC. FOR APPROVAL OF
AN INCREASE IN ITS RATES FOR
WATER AND SEWER SERVICES**

**KIAWAH PROPERTY OWNERS
GROUP RESPONSE TO
KIAWAH ISLAND UTILITY'S
ANSWER TO PETITION FOR
REHEARING OR
RECONSIDERATION**

INTRODUCTION

This matter is before the South Carolina Public Service Commission (the "**Commission**") by way of an Application for Adjustment of Rates (as amended and supplemented, the "**Application**") filed on August 3, 2011 on behalf of Kiawah Island Utility, Inc. ("**KIU**") pursuant to S.C. Code Ann. § 58-5-240 and 23 S.C. Code Ann. Reg. §§ 103-512.4.A and 103-712.4.A.

On February 8, 2012, the Commission issued an order adopting the proposed order of the Office of Regulatory Staff ("**ORS**") with two modifications. KIU was instructed to remove all expenses relating to the Cougar Island purchase and to adjust the federal income tax rate to 34%. On March 7, 2012 Kiawah Property Owners Group ("**KPOG**") filed a Petition for Rehearing or Reconsideration with the Commission. On March 19, 2012 KIU filed an Answer to KPOG's Petition for Rehearing or Reconsideration. KPOG would like to bring to the attention of the Commission that it was not served with KIU's response until Monday March 25, 2012.

I. KIU's Answer states that the Commission's Determination with Respect to KIU's purchase in 2008 from Kiawah Resort Associates ("KRA") of the Down Island Storage Parcel is fully supported by the evidence of record.

Throughout the course of this preceding, including this most recent filing, KIU has somehow posited that it is KPOG's obligation to disprove the appropriateness of transactions which KIU has entered into. This is simply not the law in South Carolina. Utilities Services of South Carolina, Inc. v. Office of Regulatory Staff, 392 S.C. 96, 708 S.E.2d 755 (2011).

Further, rate proceedings are not limited to establishing fair and just rates; they also include oversight of companies' practices. Since KIU failed to seek prior Commission approval before entering into the land and financing transactions in this docket and failed to adhere to Commission rules, there is no other alternative but to review these transactions in the context of the current rate increase docket.

While KIU argues that the amount it paid was reasonable and that the land was used and useful to KIU's operations, it offers no proof of this from an appraisal company. Instead KIU relies solely on the testimony of its Chief Financial Officer, Steven D. Heyboer ("Heyboer"), with regard to how the amount paid for the property was determined. Apparently, KIU solely relied on one. There is no way for the Commission to determine whether or not the property in this transaction was indeed transferred at fair market value other than relying solely on the testimony Heyboer, who offered no corroborating evidence to substantiate his statements. These appraisal were requested from KIU, but were not produced and in fact their refusal to produce them came after the hearing.

II. KIU states the record establishes the reasonableness and necessity of KIU's Loan with RBC Bank and that there is substantial evidence to support the allowance of the interest expenses associated with the RBC loan in the test year.

Once again, KIU fails to understand the issue being raised in the Petition for Reconsideration. It is simply that KIU must comply with Commission Rules 103-541- and 103-743 (the "**Regulations**") by seeking approval of NOT ONLY the transfer of property but also the complex financing transaction and substantial increase in debt with a new lender in 2008. KIU has done both without complying with the Regulations.

KPOG vigorously disagrees with KIU's latest filing on this point. KIU has been repeatedly admonished by the Commission regarding intercompany transactions and, more specifically, compliance with Commission Regulations. In the instance of financing the land transactions, KIU has forged ahead in complete defiance of the Commission Regulations and previous admonitions relating to its compliance with those regulations.

These transactions have significantly increased KIU's debt over the last several years. In fact, the maturity date of the loan with RBC is 2014. If KIU is not able to refinance the existing loan, it will face an approximate \$8 million debt call at that time. (KPOG Stipulated Exhibit 10 2010 Audited Financial Statement page 13)

Further, the current debt incurred under the loan with RBC is totally separate and apart from the financing KIU will need to obtain for the second water line. Under cross examination, Heyboer testified RBC is the most likely candidate to finance the second water line (Tr. P.196 lines 21-23).

In short, KIU is using a double standard. While holding KPOG, (an organization representing the interests of the public) to the strict standard of procedural rules, it completely

ignores its own procedural obligations under the Commission's Regulations as a regulated utility (emphasis supplied).

The philosophy of KIU has been "seek forgiveness, not permission". That directly contravenes the law in South Carolina. For over 15 years KIU has been admonished by this Commission not to enter into any substantive contracts without the Commission's prior permission.

III. KIU argues that the Utility Service Agreement entered between KIU and KRA in 1997 is irrelevant.

The 1997 Utility Service Agreement ("1997 USA") between KIU and KRA is relevant in this proceeding and KIU wrongly argues that the 1997 USA did not impose any expenses on KIU. In the 1994 Utility Service Agreement ("1994 USA"), any sale of land from KRA to KIU would occur at 50% of fair market value, while the 1997 USA states any sale of land from KRA to KIU would occur at fair market value, doubling the cost to be incurred by the Utility, thereby doubling the cost to be recovered from ratepayers. In 2008, 2009, and 2010 KIU purchased three parcels of land from KRA for a total "fair market value" of \$5.16 million per the 1997 USA. Had the 1994 USA not been terminated the cost to KIU would have been at most \$2.58 million. The 1997 USA is relevant because it imposed an additional expense of \$2.58 million on KIU, which translates directly into higher rates for KIU customers.

IV. The Audited Financial Statements do not provide a basis for Altering the Order

Again, KIU misses the point. KPOG never asserted that the debt on the books of KIU is \$15 million; rather, even more importantly, KPOG's assertion is that KIU, under its demonstrated operating philosophy, could, without permission of the Commission, increase its debt up to \$15 million from its present \$8 million. This debt ceiling, which KIU, not the Commission,

established exceeds the value of all the assets of the Utility. This is clearly not in the interest of the public.

Since the last rate increase, KIU has come before this Commission seven times to seek additional rate increases for purchased water costs. KIU had ample opportunity to apprise the Commission of its financing transactions. It consciously chose not to do so.

V. KIU believes that the Commission is not obligated to adopt the testimony of KPOG's expert witness William Rogers as KPOG argues.

William Rogers ("Rogers") has present-day, hands-on practical utility experience and expressed his expert opinion that a 7% Operating Margin would be fair to both KIU and its customers. Through his pre-filed testimony, which was not contested by KIU, Rogers provided the Commission an alternative Operating Margin to the one proposed by KIU. However, the Commission opted to ignore Rogers' testimony and stated KPOG's witnesses did not provide any meaningful analysis of the operating margin. (Order No, 2012-98 Pg. 18).

In this case KPOG respectfully submits the Commission did not address the legitimate concerns of the customers of KIU, nor recommendations as set forth by KPOG'S witnesses regarding an appropriate Operating Margin.

KPOG reiterates that Hannah Majewski testified ORS usually recommends between 10-15% Operating Margin (Tr. P. 456 lines 7-8). She gave no rationale for this range, but simply states that it is the one ORS uses. One can interpret this to mean a company requesting an Operating Margin within the range of 10-15% would automatically receive it. And even if it were unwarranted, ORS would recommend it simply because it falls within the acceptable range.

In choosing its consultants, KIU has engaged a team with extensive experience representing utilities rather than protecting the public interest. They have been paid to create a case for the highest possible Operating Margin, without regard for economic realities exerting downward pressure on profits, regardless of the market.

The Order does not even mention the name of KPOG's expert witness Bill Rogers in analyzing and recommending an appropriate Operating Margin. This oversight should merit the Commission's reconsideration of an appropriate Operating Margin for KIU. Rogers, a high level executive in the water/wastewater industry, offers a balanced assessment of market forces exerting downward pressure on profits in the industry.

VI. KIU argues the Commission has the authority to determine the weight it gives to the comment letters. These comment letters do not change the financial analysis on which the commission's determination was based.

The Commission's mission is to carry out the regulatory functions and responsibilities set forth for it by the laws and policies of the State of South Carolina pertaining to KIU through a dynamic and proactive regulatory process, while seeking to best serve the needs of all of the citizens of the State.

Public hearings have a clear purpose. In this instance, the Commission wisely chose to hear from members of the public and their concerns about the rates and practices of the Utility. In this filing, KIU selected portions of comments made at the public hearing to suit its interests and arguments to the PSC. This is wrong and is not consistent with the Commission's practices and completely ignores the overwhelming opposition to the Utility's practices and proposed increase.

VII. KIU states the Commission's ruling of the hearing officer's denial of the Motion to Compel should be sustained.

Interestingly, KIU demands strict compliance with Commission Regulation 103-833(B) regarding the 20 day rule on Interrogatories, but itself ignores Commission rules regarding approval of external financing transactions. KIU uses procedural cover, but avoids reference to its intentional decision not to seek Commission approval for its land and financing transactions. In short, KIU continues to ask for forgiveness, rather than seeking approval from the Commission, for failing to adhere to Commissions Regulations.

Why is KIU so reluctant to provide and place into evidence, as it is required to do, relevant information to support its position that its transactions have been fair and in the public interest? To paraphrase William Shakespeare, "me thinks thou dost protest too much" or in more colloquial, what does KIU have to hide?

Summary

This has been a complex, important, and heavily contested docket. A reconsideration of the increase in rates as set forth in the Commission's original order is vital to protecting the public interest in this matter. Equally if not more important, are KIU's deliberate and repeated violations of Commission regulations over the years. KPOG respectfully requests the Commission to disallow these non-compliant practices which have resulted in a substantial increase in KIU's debt and a commensurate requirement for increased rates. At some point, the Commission must say this should not and will not continue.

A careful examination of the facts in this case demonstrates KIU's ongoing pattern of disrespect for Commission regulations. Instead of responding to the Commission's efforts to work with the Utility on these matters, KIU appears to have chosen to simply disregard Commission rules.

RESPECTFULLY SUBMITTED,



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March 27, 2012